

## **COPYRIGHT AND FAIR USE OVERVIEW**

### WHAT IS COPYRIGHT?

The [Copyright Law of the United States \(Title 17\)](#) provides authors of original works protection for their intellectual property in any work exhibiting minimal creativity and fixed in a tangible mode of expression. Copyright applies automatically; a copyright notice (©) is no longer required for a work to receive copyright protection. The Copyright Act embraces published or unpublished intellectual property in all formats and media.

### COPYRIGHT BASICS

Copyright is defined in federal law (Title 17, U.S. Code), and provides protection to creative and intellectual works. Copyright gives the copyright holder (usually the creator), certain exclusive rights for a period of time. Copyright law is supported by case law, judicial decisions, and additional state and local statutes.

Xavier University makes every effort to comply with the provisions of the Copyright Act and provides this document to assist the individual members of the Xavier community in understanding and complying with copyright.

The Copyright Act offers certain provisions for educational enterprises. These are referred to as Fair Use provisions and can be found in [Section 107 of the Copyright Act of 1976](#). They allow educators to use copyrighted works without permission, for nonprofit instruction, research, or scholarly activities.

Copyright law and fair use directly influence many traditional practices in higher education, such as the use of course reserves, distribution of handouts, and the publication of faculty and student research, as well as the use of video, multimedia and internet resources in teaching and scholarship.

FAIR USE

*Fair Use Summary chart*

Factor	Favoring Fair Use	Opposing Fair Use
<b>Purpose &amp; character of the use</b>	<ul style="list-style-type: none"> <li>-Nonprofit institution</li> <li>-Education &amp; teaching</li> <li>-Research or scholarship</li> <li>-Criticism or comment</li> <li>-News reporting</li> <li>-Transformative or productive use</li> <li>-Personal</li> <li>-Parody</li> </ul>	<ul style="list-style-type: none"> <li>-For-profit institution</li> <li>-Commercial - Entertainment</li> <li>-Bad faith behavior is involved</li> <li>-Denying credit to the original author</li> </ul>
<b>Nature of the work</b>	<ul style="list-style-type: none"> <li>-Published</li> <li>-Factual or non-fiction</li> <li>-Use important to instructional objectives</li> </ul>	<ul style="list-style-type: none"> <li>-Unpublished</li> <li>-Highly creative, imaginative work (artwork, graphics, music, novels, plays, commercial movies)</li> <li>-Fiction</li> </ul>
<b>Amount used &amp; substantiality of the portion used (portion used in relation to the whole)</b>	<ul style="list-style-type: none"> <li>-Small quantity used</li> <li>-Portion used is not central to the work (not the “heart of the work”)</li> <li>-Amount used is appropriate for the educational purpose</li> </ul>	<ul style="list-style-type: none"> <li>-A large portion or the entire work is used</li> <li>-The portion used is central to the work or it is the “heart of the work”</li> </ul>
<b>Effect of the use on the market</b>	<ul style="list-style-type: none"> <li>-User owns a lawfully acquired or purchased copy of the work</li> <li>-One or a few copies are made</li> <li>-Use has no significant effect on the market or potential market of the work</li> <li>-There is no similar product marketed by the copyright holder</li> <li>-There is no licensing mechanism</li> </ul>	<ul style="list-style-type: none"> <li>-Use could replace the sale of the work</li> <li>-Use impairs the market or potential market for the work</li> <li>-There is a licensing mechanism or affordable permission available for the work</li> <li>-Numerous copies are made</li> <li>-Work is made available via the Internet</li> <li>-There is repeated or long-term use</li> </ul>

### *Definitions on Fair Use*

- *Brevity*: For fair use provisions to be applicable, in many cases only brief sections of a work should be used.
- *Spontaneity*: For fair use provisions to be applicable, in many cases the use must be “spontaneous.”
- *Cumulative Effect*: For fair use provisions to be applicable, it is not permitted for an educator’s use to create a negative cumulative effect on a copyright owner.

### *What can be used under Fair Use provisions?*

Interpretation of the doctrine of fair use rests with the user of copyrighted works. Standards of educational fair use are not definitively outlined in the law.

Given the caveat above, generally speaking, acceptable fair uses include the following:

1. Single copying for educators: A single copy may be made of any of the following by or for an educator at his or her individual request for his or her scholarly research or use in teaching or preparation to teach.
  - A chapter from a book;
  - An article from a periodical or newspaper;
  - A short story, short essay, or short poem, whether or not from a collective work; A chart, graph, diagram, drawing, cartoon, or picture from a book, periodical, or newspaper.
2. Multiple copies for classroom use: Multiple copies (not to exceed in any event one per student in a course) may be made by or for an educator giving the course for classroom use or discussion at a non-profit educational institution provided that:
  - The copying meets the definitions of brevity and spontaneity;
  - It meets the cumulative effect definition; and
  - Each copy includes a notice of copyright.
3. Coursepacks: A course pack is a compilation of various reproduced copyrighted works (e.g., articles from journals, chapters from textbooks, and various other readings) that an instructor assembles.

Court rulings have established the rule that you must obtain permission before reproducing copyrighted materials for an academic coursepack, whether print or electronic. Many campuses are now affiliated with established clearance services or are prepared to obtain clearance on behalf of instructors. Most publishers grant "clearances" for coursepacks--that is, for a fee, publishers give permission for their books or articles to be copied and distributed in educational contexts. Such clearances normally last for one semester or for one school term. After that, the instructor must seek clearance again.

4. Electronic & traditional reserves: Educators may place copyrighted works on reserve, or submit electronic documents for e-reserves provided that:
  - They meet the definitions of brevity and spontaneity;
  - They meet the cumulative effect definition;

- They include a notice of copyright;
  - They include citation information or an attribution to the source;
  - Access is limited to students enrolled in the class;
  - Access is terminated at the end of the class term; and
  - The educator obtains permission if these materials are to be used again for the same class.
  - It is preferable to link to electronic content rather than uploading it, if possible.
5. Distance learning: The [TEACH Act](#) (Revised 17 U.S.C. § 110(2)) is meant to facilitate distance learning. It allows for unprecedented use of digital works in distance education, online classes, and digital course management systems, but has strict limitations as well. Educators may use a copyrighted work for electronic classroom use provided that:
- The use must be part of mediated instructional activities, i.e., part of a specific lesson, and not simply supplementary materials;
  - The use must be limited to a specific number of students enrolled in a specific class, and access must be terminated at the end of the lesson or class;
  - The use must either be for 'live' or asynchronous class sessions and can be for online-only courses or "hybrid" courses, where some class sessions are in-person and some are online;
  - The educator or library possesses a legal copy of the work;
  - The use must not include the transmission of textbook materials, materials "typically purchased or acquired by students," or works developed specifically for online uses;
  - The institution must have developed and publicized its copyright policies, specifically informing students that course content may be covered by copyright, and include a notice of copyright on the online materials;
  - The institution must implement some technological measures to ensure compliance with these policies, beyond merely assigning a password;
  - Only "reasonable and limited portions," such as might be performed or displayed during a typical live classroom session, may be used;
  - The TEACH Act permits digital clips of video works to be shown, but in reasonable and limited portions. Streaming videos are recommended to prevent students from downloading videos, unless licensed to do so.
6. Canvas and other online course management systems: Placing copyrighted materials on any university-supported course management system (CMS) such as Blackboard or Canvas raises challenging questions about copyright. For Fair Use to apply, the educator must generally work under the same limitations and conditions as with electronic reserves and TEACH Act provisions (above). Where available, persistent links to copyrighted materials are strongly recommended.
7. Fair Use and Digital Millennium Copyright Act: Fair Use cannot be claimed as a defense for violations of the [Digital Millennium Copyright Act](#) (DMCA) which sets forth a general prohibition on circumvention of technological measures that control access to a digital work.